
(1955) 11 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ No. 142 of 1955

Jugraj	Vs	APPELLANT
Rajasthan State		RESPONDENT

Date of Decision : 23-11-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 254
Marwar Village Panchayats Act, 1945 — Section 93(2)
Rajasthan Panchayat (Amendment) Ordinance, 1955 — Section 9

Citation : AIR 1956 Raj 107 : (1956) RLW 417

Hon'ble Judges : K.N. Wanchoo, C.J; I.N. Modi, J

Bench : Division Bench

Advocate : Amritraj, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application under Article 226 of the Constitution by Jugraj, and arises in the following circumstances:

2. The case relates to village Osia in which a Panchayat had been established under the Marwar Village Panchayat Act of 1945 (hereinafter called the Marwar Act). From the 1-1-1954, the Rajasthan Panchayat Act (No. 21) of 1953 (hereinafter called the Act) came into force.

A notification was issued under the Act for the establishment of a Panchayat consisting of two villages namely Osia and Dhunaria. Thereafter, elections were held to this Panchayat of the two villages, and certain persons were elected. The applicant contends that u/s 93 (2) of the Act the Panchayats established under the Marwar Act were deemed to have been established under the Act from the date of its commencement, i.e. 1-1-1954.

Therefore, it was not open to the State Government by means of a notification, dated 13-11-1954, to establish another Panchayat consisting of Osia and

Dhunaria, and that if the State Government wanted to add any area to the Osia Panchayat, it should have taken action u/s 86 of the Act.

No action was, however, taken u/s 86, and as the notification of 13-11-1954, establishing one Panchayat for two villages namely Osia and Dhunaria really amounted to adding further area to the existing Panchayat of Osia, the establishment of a Panchayat for Osia and Dhunaria was ultra vires of the powers of the State Government.

A similar application relating to the Panchayat of Bar came to this Court, and" was decided by a Bench, of which one of us was a party, on 8-9-1955 (vide -- "Bhomaram v. State of Rajas-than", Civil Writ No. 25 of 1955 (Raj) (A).

It was held in that case that it was not open to the State Government to add areas to existing Panchayats without recourse to the provisions of Section 86 of the Act, and as that was not done in the case of the Panchayat at Bar, the reconstitution of the Bar Panchayat by addition of certain then villages to it was held to be against the provisions of the Act.

3. Since then an Ordinance has been issued by His Highness the Raj pramukh, which is titled as the Rajasthan Panchayat (Amendment). ordinance (order 15) of 1955 (hereinafter called the Ordinance), It came into force at the end of October, 1955.

The question, therefore, arises whether in view of this Ordinance the decision in "Bhomaram"s case (A), remains good law or not.

4. The Ordinance consists of four sections, but we are concerned with Section 3 by which two subsections have been added to Section 93 of the Act. These additional sub-sections are as follows:

"(3) In making a direction for the re-constitution of a panchayat under Sub-section (2) the State Government may order any area to be included in or excluded from the Panchayat circle of such panchayat and may issue further directions as to the number of panches of the panchayat for the altered area and as to other matters relating to such reconstitution and 16-election of panches thereto; and nothing in Section 86 shall apply or be deemed ever to have applied to such inclusion or exclusion.

4. Notwithstanding any defect or lack of form, procedure, jurisdiction or power and notwithstanding anything contained in any judgment, decree or order

(i) all Panchayats of the category specified in Sub-section (2), which have been notified after the commencement of this Act to have; been established u/s 9 or to have been reconstituted under Sub-section (2) of this section shall be deemed to have been reconstituted, as respects their Panchayat circle, under Sub-section (2) read with Sub-section (3), of this section, and

(ii) all orders made u/s 4 as to the number of Panches of such Panchayat or as to other matters relating to the reconstitution of such Panchayats and the re-

election of Panches thereto as well as all elections held in pursuance of such orders shall be deemed to have been made, or held, as the case may be, under Sub-section (3) of this section,"

It has been provided in Section 9 of the Ordinance that the new sub-sections shall be deemed always to have been inserted in the Act so that the position now is that Section 93 of the Act must be held to consist of four sub-sections from the very beginning including the two new sub-sections added by the Ordinance.

By the new Sub-section (3), the State Government has been given the power, when ordering re-constitution of a Panchayat under Sub-section (2) of Section 93, to include or exclude any area from the Panchayat circle of such existing Panchayat, and also power to give directions as to the number of Panches of the panchayat for the altered area and as to other matters relating to such re-constitution, and re-election of panches thereto.

It is further provided that nothing in Section 80 shall apply or be deemed ever to have applied to such inclusion or exclusion.

5. It is obvious that if Sub-section (3) is valid, the application must fail for this sub-section must be deemed to have come into force from 1-1-1954, and the re-constitution under the notification of 13-11-1954, must be deemed to have been made under this sub-section.

Further, it is specifically provided in the new Sub-section (4) that all Panchayats of the category specified in Sub-section (2), which have been notified after the commencement of the Act to have been established u/s 9 or to have been re-constituted under Sub-section (2) of this section shall be deemed to have been reconstituted, as respects their Panchayat circle, under Sub-section (2) read with Sub-section (3) of this section, and all orders made u/s 4 as to the number of Panches of such Panchayat or as to other matters relating to the reconstitution of such Panchayats and the re-election of Panches thereto as well as all elections held in pursuance of such orders shall be deemed to have been made, or held, as the case may be, under Sub-section (3) of this section.

These two sub-sections therefore validate what was done by various notifications of Government in October or November, 1954, and in fact supersede the judgment of this Court dated 6-9-1955 (A). Therefore, unless the Ordinance itself is ultra vires this application must fail.

6. It has however been urged that the Ordinance is invalid as it is hit by Article 14 of the Constitution. The argument is that discrimination is made between new panchayats established u/s 3 of "the Act and the existing panchayats continued u/s 93 (2) of the Act,

The discrimination is that in case of panchayats established u/s 3 if any change in the area of such panchayats is to be made the procedure provided u/s 86 has to be followed, while in the case of panchayats continued u/s 93 (2), such procedure has been definitely excluded by Sub-section (3) to Section 93.

That is undoubtedly so, but there is clearly a principle of classification discernible in this case between panchayats which were existing on the date the Act came into force and Panchayats which were to be established after the Act came into force.

In order to maintain continuity it was necessary that the existing panchayats in those areas of Rajasthan where they were in existence should be continued, and Section 93 (2) provided for continuance of such panchayats for the time being. But as these panchayats were established under various Acts with different provisions in various parts of Rajasthan, power was given to the State Government to re-constitute such panchayats.

Some of them, according to the legislature's command, were to be necessarily re-constituted, namely those which were not elected on adult franchise. Others, which were elected on adult franchise, were to be re-constituted at the discretion of the State Government.

But it was obviously necessary to continue the existing panchayats till this matter of re-constitution could be gone into as it was bound to take time. The old panchayats thus continued from 1-1-1954, under the Act, and were gradually reconstituted u/s 93 (2). What is the form of that re-constitution has now been made clear by new Sub-section (3) of Section 93.

We, therefore, see no ground for holding that merely because the procedure of Section 86 is not to apply to the existing panchayats, there was any discrimination as between the existing panchayats and the panchayats to come into existence in future, for after all after the re-constitution of the existing panchayats u/s 93 (2), the provisions of Section 86 would apply to such reconstituted panchayats also in future. It cannot be said therefore that this provision contained in Sub-section (3) is hit by Article 14.

7. Another argument based on the same Article is that Sub-section (2) of Section 93 gives unfettered powers to the State Government to re-constitute or not to re-constitute such existing panchayats as were elected on adult franchise, and that this will lead to discrimination, and therefore the provision is hit by Article 14.

In this connection reliance was placed on --"Madhosingh v. State of Rajasthan", 1954 Raj 197 (Am V, 41) (B), and -- "Manohar Singh v. State of Rajasthan", AIR (1954)41 Raj 85 . It is enough to say that there is no force in this contention either. The two cases relied upon by learned counsel and the facts on which those two cases are based are, in our opinion, clearly distinguishable.

In "Madhosingh's case (B)", the question was about the application of a certain. Act to certain areas in Rajasthan, and it was contended that there was no guiding principle anywhere in the Act controlling the discretion of the State Government as to the application of the Act to particular areas in Rajasthan.

The Act dealt with agricultural rent and this infringed on the right of landlords to collect rent from their tenants. It was in those circumstances held that the

absence of a guiding principle gave unfettered power to the State Government, which was liable to be abused. In "Manohar Singh's case (E)", the provision which was struck down was about exemption of certain persons from the provisions of the Excise Act.

It was held that it gave unregulated and unbridled power to the Government by which it would be open to it to exempt any person whatsoever from the operation of the Act as contra-distinguished from any other person without any rhyme or reason. The provision was thus liable to abuse, and might be used as a weapon of favoritism by the State Government.

8. The present provision is, in our opinion, not subject to the same defects and is not liable to abuse. Nor does it infringe the right of any private individual Establishment of a panchayat for a certain area depends upon a number of considerations which it is very difficult to lay down in an Act of the legislature.

Discretion has therefore to be left to the executive in matters of this kind, and where such discretion is not per se liable to abuse, there is no reason why it should be said that the discretion left is a kind of unregulated and unbridled power conferred on the executive.

We may in this connection point out that in Section 3 also the same discretion is left with the Executive. That section gives power to the State Government in its discretion to establish a panchayat for a village or group of villages not included within the limits of a municipality. The time and place of establishment of panchayats is thus left to the discretion of the State Government, and it cannot be really said that such discretion gives unregulated and unbridled power to the State Government which is liable to abuse.

We are therefore of opinion that in the circumstances of the present legislation it cannot be said that the discretion that has been given to the State Government either by Section 3 or by Section 93 (2) is liable to abuse and lead to discrimination, and is therefore hit by Article 14 of the Constitution.

9. Lastly it was urged that the Act was passed with the assent of the President, but the Ordinance has been passed by the Rajpramukh and the assent of the President has not been obtained in its case, and therefore the Ordinance is invalid.

We are of opinion that there is no force in this contention either. The Act required the assent of the President for some of its provisions dealing with the criminal and civil powers of the panchayat were in conflict with the Civil and Criminal Procedural laws which are mentioned in the concurrent list, and which were already in existence.

It was, therefore, necessary in view of those provisions under the Act to obtain the assent of the President. There is no point in obtaining the assent of the President to certain sections of the Act. In such cases, what is done is that the assent of the President is obtained to the entire Act.

But the provisions which have been amended by. the Ordinance have nothing to do with any existing legislation of the Central Legislature covered by the concurrent list. It was therefore not necessary to obtain the assent of the President to this modification.

10. We are therefore, of opinion that the Ordinance cannot be attacked on these grounds. It clearly validates the acts of the Government by new Sub-sections (3) and (4) added to Section 93 of the Act.

11. In this view of the matter, the application falls and is hereby dismissed.